



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

Docket Number USCG-2015-0729

RIN 1625-AA01

Port of Miami Anchorage Area; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Miami Anchorage. Under the proposal, the Miami Anchorage would be divided into two separate anchorage areas. This action is necessary to reduce potential damage to threatened coral posed by anchoring vessels. This proposed revision would update the regulation to clarify the regulatory text and to reflect the establishment of two anchorage areas instead of one area currently in place. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0729 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Ruth Sadowitz, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4307, email Ruth.A.Sadowitz@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FDEP	Florida Department of Environmental Protection
FR	Federal Register
NMFS	National Marine Fisheries Service
NPRM	Notice of proposed rulemaking
§	Section
SEFCRI	South East Florida Coral Reef Initiative
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On December 1, 2015, the Coast Guard published a Notice of Study and request for comments (80 FR 75020) advising that we were evaluating an amendment to the Miami Anchorage (33 CFR 110.188) that would divide the anchorage into two separate anchorage areas. The possible modification of the anchorage area was designed in coordination with local stakeholders in an effort to mitigate damage to coral that may be caused by vessels anchoring. Comments provided by these stakeholders, academic research, and environmental reports addressed a number of options to potentially reduce the likelihood of damage to the Florida Reef in the Miami Anchorage. Those documents, which may be found in the docket, influenced this Coast Guard's selection of the anchorage modification proposed in this notice.

In response to the Notice of Study, the Coast Guard received four comments. The first comment was from the non-profit organization, Miami Waterkeeper. Miami Waterkeeper

supports the modifications to the anchorage area as those modifications would both better protect threatened species and critical coral habitat and still allow for safe navigation.

The second comment came from the National Marine Fisheries Service – Habitat Conservation Division (NMFS). NMFS stated that they support relocating the anchorage area in order to reduce continued degradation of the coral reef and, ultimately, allow for restoration of the reef.

The third comment was from NOAA. On December 1, 2015, NOAA submitted a comment to verify the coordinates of the possible amended anchorage area listed in the notice. The coordinates for the location of the amended anchorage areas were published incorrectly. The latitudinal coordinates were inadvertently published in the longitude column and vice versa. However, the numerical coordinates published in the chart was correct. The error has been corrected in this notice of proposed rulemaking (NPRM).

The final comment came from Florida Department of Environmental Protection (FDEP). FDEP commented that the Coast Guard erred when it stated the genesis for the division of the anchorages was a SEFCRI report. While the SEFCRI report was instrumental to the evaluation of the current Miami Anchorage, the two anchorage solution was originally discussed in an academic paper authored by Lauren Waters, a FDEP employee. This paper can be found in the docket.

The comments received in response to the notice were positive or addressed non-substantive errors in the notice. The Coast Guard is therefore proceeding with a proposal to revise the Miami Anchorage under the authority of 33 U.S.C. 471, 1221 through 1236, 2071, 33 CFR 1.05–1 and Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise the Miami Anchorage by dividing the anchorage into two separate anchorage areas and clarifying text throughout the regulation. This revision is intended to reduce threats to protected coral without compromising the ability of vessels to anchor safely. Although the two separate anchorages encompass a smaller area, they allow for the facilitation of safe anchorage of both shallow and deep draft vessels. The amended coordinates would establish two anchorages with a combined area of approximately 1.5 square miles thereby reducing the total anchorage area by approximately 3 square nautical miles. The amended anchorage areas would be established with the following coordinates:

Small western anchorage (approximate water depths: 45 ft)

	Latitude	Longitude
NW Corner	25° 47'57.687"N	080° 05'37.225"W
NE Corner	25° 47'57.341"N	080° 05'26.466"W
SE Corner	25° 46'31.443"N	080° 05'27.069"W
SW Corner	25° 46'31.557"N	080° 05'37.868"W

Large eastern anchorage (approximate water depths: 120 ft)

	Latitude	Longitude
NW Corner	25° 48'13.841"N	080° 04'59.155"W
NE Corner	25° 48'04.617"N	080° 04'04.582"W
SE Corner	25° 46'32.712"N	080° 04'28.387"W
SW Corner	25° 46'32.767"N	080° 04'59.775"W

Additional minor revisions to the Miami Anchorage regulation are also proposed to pluralize the anchorage grounds that would be established and to clarify existing regulation text.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on relatively minor changes to the existing Miami Anchorage regulation. This proposed regulation would create two separate anchorage areas with a combined total of 1.5 square miles of anchorage; while this does reduce the total anchorage area, the ability of shallow and deep draft vessels to safely anchor should not be impacted. This proposed regulation would clarify other regulatory text, but no other substantive changes are proposed.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to use the anchorage may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described

in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves reducing an anchorage. Normally such actions are categorically excluded from further review under paragraph 34(f) of Figure 2-1 of Commandant Instruction

M16475.ID. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 110

Anchorage grounds

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110--ANCHORAGES.

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.188 to read as follows:

§ 110.188 Atlantic Ocean off Miami and Miami Beach, FL.

(a) *The anchorage grounds.* (1) Anchorage A. All area of the Atlantic Ocean, encompassed by a line beginning at 25° 47'57.687"N, 080° 05'37.225"W thence east to 25° 47'57.341"N, 080° 05'26.466"W thence south to 25° 46'31.443"N, 080° 05'27.069"W, thence west to 25° 46'31.557"N, 080° 05'37.868"W, thence back to origin.

(2) Anchorage B. All area of the Atlantic Ocean, encompassed by a line beginning at 25° 48'13.841"N, 080° 04'59.155"W, thence east to 25° 48'04.617"N, 080° 04'04.582"W, thence south to 25° 46'32.712"N, 080° 04'28.387"W, thence west to 25° 46'32.767"N, 080° 04'59.775"W, thence back to origin.

(b) *The rules and regulations.* (1) Except in cases of emergency, no vessel shall be anchored in the Atlantic Ocean in the vicinity of the entrances to the approach channels leading to the cities of Miami Beach and Miami, FL., outside of the anchorage grounds defined and established.

(2) Any vessel anchoring under circumstances of emergency outside of either anchorage ground shall be shifted to a new berth within the grounds immediately after the emergency ceases.

- (3) All vessels seeking to anchor shall lie at anchor with as short a cable as conditions

will permit.

(4) A vessel, upon being notified to move into the anchorage limits or to shift its position on an anchorage ground, must get underway at once or signal for a tug and must change position as directed with reasonable promptness.

(5) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, U.S. Coast Guard, Miami, Florida, is hereby empowered to shift the position of any vessel anchored on an anchorage ground or outside thereof, or any vessel moored or anchored so as to impede or obstruct vessel movements or obstruct or interfere with range lights.

(6) Vessels carrying explosives shall be anchored only under a written permit issued by the Captain of the Port and at such point as she or he may direct.

(7) Vessels carrying explosives shall be at all times under the charge or command of a competent person and must display by day a red flag, of not less than 16 square feet, at the masthead or not less than 10 feet above the upper deck if the vessel has no mast; at night a red light shall be displayed in the positions specified for the red flag.

(8) Nothing in this paragraph shall be construed as relieving the owner or person in charge of any vessel from penalties for obstructing navigation, or for obstructing or interfering with range lights, or for not complying with navigation laws in regard to lights, fog signals, or other aids to navigation, or for otherwise violating the law.

(9) All vessels desiring to use an Anchorage must notify the Coast Guard Captain of the Port, via the Biscayne Bay Pilots on VHF-FM Channel 12 or 16.

(10) All vessels anchored within the anchorage grounds shall maintain a 24-hour bridge watch by an English speaking licensed or credentialed deck officer monitoring VHF-FM Channel 16. This individual shall perform frequent checks of the vessel's position to ensure the

vessel is not dragging anchor.

(11) Vessels experiencing casualties such as a main propulsion, main steering, or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via the Coast Guard Sector Miami on VHF-FM Channel 16.

(12) The Coast Guard Captain of the Port may close the anchorage grounds and direct vessels to depart an anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety.

Dated: May 4, 2016

S. A. Buschman,
Rear Admiral, U.S. Coast Guard,
Commander, Seventh Coast Guard District.

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